IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

WP(C).No. 26168 of 2007(M)

OS.21/2004 of II ADDL.SUB COURT,KOZHIKODE

.....

PETITIONER:

M. ACHUTHAN NAIR,
S/O. MADANCHERI KURIYARATHARAYIL MADHAVIAMMA,
RESIDING AT SAROJINI NIVAS, KUTTIKKATTOOR AMSOM,
VELLIPARAMBU DESOM, KOZHIKODE TALUK.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENT:

T.C. KRISHNA KUMAR,
S/O. M.K. KRISHNANKUTTY MENOKKY, RESIDING AT
SARASIJAM HOUSE, THAYYIL PARAMBIL,NELLIKKODE AMSOM
KOVOOR DESOM, KOZHIKODE.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts.:

Ext.P1 true copy of the order passed by the Honourable court in R.F.A. 105/07

Ext.P2 true copy of the affidavit filed in support of I.A. 1251/07/

Ext.P3 true copy of the draft security bond drawn in favour of the Presiding Officer, Subordinate Judges Court II, Kozhikode.

Ext.P4 true copy of the document.

Ext.P5 true copy of the counter statement filed by the respondent.

Ext.P6 true copy of the order of the learned Sub Judge dated 19.7.2007.

M.N.Krishnan, J.

==========

W.P(C).No.26168 of 2007

==========

Dated this the 10th day of September, 2007.

JUDGMENT

This Writ Petition is filed challenging the order of rejection of the draft bond. A Division Bench of this Court granted an interim stay of the execution of the decree on condition that the appellant furnishes security for the decree amount to the satisfaction of the court below within a period of one month. Accordingly, the appellant in the R.F.A. filed a surety bond and along with that produced title deed as well as encumbrance certificate subject to the objection raised by the decree holder.

2. It is true that the court has to satisfy about the correctness of the security before accepting it. But unfortunately, the order does not indicate the defects in the bond and it has simply dismissed the same. This Court while granting order of stay wanted the court below to satisfy the conditions regarding the sufficiency of the security for the decree amount. Therefore,

outrightly rejecting without assigning reasons for the same was not proper and it should not have been dismissed for default.

3. Therefore, I direct the court below to restore I.A.No.1251 of 2007 in O.S.No.21 of 2004 to file. Petitioner is also directed to cure the defects, if there are defects and only on non-compliance, the court may pass an order rejecting the application. Needless to say that the other side also may be heard before final disposal of the matter.

Writ Petition is disposed of as above.

M.N.Krishnan,
Judge.

ess 10/9